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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES MARCUS RUSSELL,

Defendant and Appellant.

B205833

(Los Angeles County
Super. Ct. No. YA059773)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Mark S. Arnold, Judge. Reversed in part with directions and affirmed in part.

Nancy L. Tetreault, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson, Lawrence M. Daniels and Robert David Breton, Deputy Attorneys General, for Plaintiff and Respondent.

James Marcus Russell was convicted of four counts of kidnapping to commit a sex offense (counts 1, 3, 4 and 6), one count of attempted sodomy by force (count 2), one count of robbery (count 5), two counts of forcible oral copulation enhanced by kidnapping allegations (counts 7 and 8), one count of sodomy by force enhanced by a kidnapping allegation (count 9), and two counts of sexual penetration by a foreign object enhanced by kidnapping allegations (counts 10 and 11), with true findings on allegations that he had suffered one prior strike conviction that also qualified as a serious felony, and had served one prior prison term. (Pen. Code, §§ 209, subd. (b)(1), 664, 286, subd. (c)(2), 211, 288a, subd. (c)(2), 289, subd. (a)(1), 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667, subd. (a)(1), 667.5, subd. (b).)¹

The trial court sentenced Russell to state prison for a term of 185 years to life, calculated as follows: 14 years to life, plus 5 years pursuant to section 667, subdivision (a)(1), for each of counts 1, 3, 4, and 6, all to run consecutively; a consecutive sentence of 5 years for count 5; a consecutive sentence of 50 years to life plus 5 years for count 7; consecutive sentences of 16 years for each of counts 8, 9, and 10; a consecutive sentence of 16 years plus 1 year for count 11, with the 16-year sentence stayed pursuant to section 654. The court also imposed a sentence of 12 years for count 2 but stayed it pursuant to section 654. The court further imposed a second sentence for count 7 of 15 years to life but stayed it pursuant to section 654.

In Russell's original appeal from the judgment, we concluded that the trial court had erred by refusing Russell's request, made after the jury returned its verdict but before both the bifurcated trial on the priors and sentencing, to discharge his counsel. We vacated Russell's sentence and certain other parts of the judgment and remanded for a new trial on the priors, a new hearing on Russell's motion for new trial, and a new sentencing hearing. We also explained that we agreed with Russell's argument that the second sentence imposed for count 7 (15 years to life) was improper, although we also

¹ All subsequent statutory references are to the Penal Code.

acknowledged that the point was moot given that we were vacating the entire sentence and remanding for resentencing. (See generally *People v. Russell* (Mar. 22, 2007, B188809) [nonpub. opn.].) On remand, the trial court imposed the same prison sentence it had originally imposed.

Russell raises two issues on the present appeal. First, he argues that, for reasons we explained in our previous opinion in this case, the second sentence imposed for count 7 should be stricken. Respondent concedes the point, and for the reasons expressed in our previous opinion, we agree. On remand, the trial court shall enter an order striking that sentence and shall prepare an amended abstract of judgment reflecting correction of the error.

Second, Russell argues that the trial court's imposition of consecutive sentences violated his jury trial right under the Sixth and Fourteenth Amendments to the United States Constitution. The California Supreme Court, however, has held that there is no Sixth Amendment right to a jury trial on aggravating factors used to impose consecutive sentences (*People v. Black* (2007) 41 Cal.4th 799, 820-823), and the United States Supreme Court has recently reached the same conclusion (*Oregon v. Ice* (2009) __ U.S. __ [129 S.Ct. 711, 714-715]). We therefore reject Russell's argument.

DISPOSITION

The judgment is reversed in part, and the trial court is directed to enter an order striking the second sentence, of 15 years to life, imposed for count 7. The trial court is further directed to prepare an amended abstract of judgment reflecting correction of the error and forward a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.

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ROTHSCHILD, J.

We concur:

MALLANO, P. J.

WEISBERG, J.*

* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.